

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

VS.

JORGE AGUILAR,
Defendant.

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C.A. NO. C-06-075

**MEMORANDUM AND RECOMMENDATION TO DENY
PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT**

Background

Plaintiff United States of America seeks recovery from defendant for defaulting on student loans guaranteed by the Department of Education (D.E. 1). The summons and complaint were served by certified mail, return receipt (D.E. 4). The return receipt card was signed by "Elsa Aguilar" on March 24, 2006, in Alice, Texas (D.E. 4). Pending is the United States' motion for entry of default (D.E. 7). No answer or responsive pleading has been filed, but the defendant did write a letter to the court on April 14, 2006, offering to settle his dispute with the United States for \$3,000 (D.E. 5). The motion was denied and the plaintiff was directed to contact counsel for the United States if he wished to negotiate a settlement (D.E.6). Pending is plaintiff's motion for entry of default (D.E. 7). It is respectfully recommended that plaintiff's motion be denied.

Applicable Law

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend a lawsuit in federal court and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default. FED. R. CIV. P. 55(a). The Federal Rules of

Civil Procedure permit service of process within the Southern District of Texas in any manner allowed by Texas law. FED. R. CIV. P. 4(e)(1). Texas law allows service by certified or registered mail. TEX. R. CIV. P. 106(a)(2). But the service is defective unless the return receipt contains the signature of the addressee. *Southwestern Sec. Servs., Inc. v. Gamo*, 172 S.W.3d 90, 92 (Tex. App.–El Paso 2005, no pet.). The return receipt does not contain the signature of the defendant. Service is defective.

RECOMMENDATION

Based upon the foregoing, it is respectfully recommended that plaintiff's motion for entry of default (D.E. 7) be denied.

Respectfully submitted this 26rd day of May, 2006.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1)(C) and Article IV, General Order No. 80-5, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (1996) (en banc).